

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

CHARLES WALLACE,

Petitioner,

CASE NO. 2:08-CV-393
JUDGE SMITH
MAGISTRATE JUDGE KING

v.

WARDEN, CHILLICOTHE
CORRECTIONAL INSTITUTION,

Respondent.

OPINION AND ORDER

Petitioner filed an action under the All Writs Act, 28 U.S.C. §1651(a), challenging his Ohio conviction for domestic violence. On May 5, 2008, the Magistrate Judge issued a *Report and Recommendation*, pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, recommending that the petition be construed by reference to 28 U.S.C. 2254 and be dismissed for failure to exhaust state court remedies. *Report and Recommendation*, Doc. No. 3. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. Petitioner contends that this action is properly considered under 28 U.S.C. 1651(a) and that he need not exhaust state court remedies.

Pursuant to 28 U.S.C. 636(b)(1), this Court has conducted *de novo* review of the Magistrate Judge's *Report and Recommendation*. For the reasons detailed therein, petitioner's objections are not persuasive and are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED** without prejudice for failure to exhaust state court remedies.

IT IS SO ORDERED.

/s/George C. Smith
GEORGE C. SMITH

United States District Judge